IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

THURSDAY, THE SEVENTH DAY OF SEPTEMBER
TWO THOUSAND AND SIX

PRESENT

THE HON'BLE MR JUSTICE J.CHELAMESWAR
AND
THE HON'BLE MR JUSTICE D.APPA RAO

WRIT PETITION No.17092 OF 2006

Between:

M/s.Bagga Distilleries Hyderabad Pvt Ltd.,
Rep. by its Managing Director,
Mr.Kuldeep Singh Bagga.

..... PETITIONER

AND

Assistant Commissioner of Income Tax,
Central Circle-1, Hyderabad,
And others.

....RESPONDENTS

THE HON'BLE MR JUSTICE
J.CHELAMESWAR
AND
THE HON'BLE MR JUSTICE
D.APPA RAO

WRIT PETITION No.17092 OF 2006

O R D E R
(Per Sri Justice J.Chelameswar)

This writ petition is filed with a prayer as follows:

> **"…Hon'ble Court may be pleased to issue a writ, direction or order in the nature of writ of mandamus holding that the impugned notice under Section 226(3) of the Income Tax Act, 1961 issued by the 1st respondent to the second respondent seeking to attach a sum of Rs.2,41,31,202/- is the tax due, pending disposal of the stay petition/appeal before the Income Tax Appellate Tribunal, Hyderabad, as illegal, arbitrary and consequently declare to be the same invalid and pass …"**

The petitioner is a private limited company engaged in the business of manufacture and sale of Indian Made Liquor. There was a search on the premises of the industry as well as the office of the petitioner company on 03.01.2002. Consequently, the petitioner's liability towards income tax for the block period commencing from 01.04.1995 and ending with 03.01.2002 was assessed for tax under Section 158(B)(C) of the Income Tax Act. Aggrieved by the same, the petitioner carried the matter in appeal before the Commissioner, Income Tax (Appeals), Hyderabad. The further details may not be necessary except stating that the appeal was partially allowed. Aggrieved by the decision of the appellate authority insofar as it went against the petitioner, the petitioner carried the matter in a further appeal to the Income Tax Appellate Tribunal. Pending appeal before

the Tribunal, the petitioner sought stay of the recovery of the above-mentioned tax. It appears that by an order dated 24.10.2005, the Income Tax Tribunal considered the application of the petitioner company along with several individual applications, which are described by the Department as belonging to a group of companies. Though we simply fail to understand as to what is the significance of the statement in law more particularly in the context of Income Tax Act, the fact remains that the Tribunal passed an order as follows:

> **"(a) Assessees shall make a payment to the Department, of Rs.25,00,000 (Rs.Twenty Five Lakhs) per month on or before the last day of each month, commencing from 31st October, 2005, pending disposal of the appeals or the expiry of this stay order, whichever is earlier;**
>
> **(b) Assessees shall swear an affidavit and submit it to the department to the extent of undertaking not to alienate, encumber, transfer or assign any of its assets in some form or the other, so as to defeat or delay the claims of the Department, in the event of the assesses losing their appeals;**
>
> **[c] The appeals are directed to be posted for final hearing on Thursday, the 8th December, 2005, as the first case in the cause list, for which no separate notice of hearing would be issued to the assesses, as this itself shall be deemed as such;**
>
> **(d) No adjournment except under exceptional and bona fide circumstances shall be asked for by the assesses from the aforesaid date of hearing fixed. It is superfluous for us to say here that the Revenue being the aggrieved, would not ask for adjournment.**
>
> **(e) In the event of failure to comply with any of the conditions specified above, assesses shall be exposed to the risk of losing not only the conditional stay granted herein, but also the early hearing."**

Insofar as the petitioner company is concerned, it appears the

liability of the petitioner company for the above-mentioned block period was determined at Rs.4,66,21,938/- and coupled with the interest, the total liability was arrived at Rs.4,83,70,260/-. The petitioner company disputes the entire liability. Admittedly, even according to the counter-affidavit, the petitioner paid certain amounts and the outstanding due from the petitioner is Rs.2,16,42,553/-.

Under Section 254 (2A) of the Income Tax Act, the Tribunal as far as possible, may hear and decide such appeal within a period of four years from the end of the financial year in which such appeal is filed. However, under the proviso thereto, wherever the Tribunal passes an order of stay of recovery of the tax, which is the subject matter of dispute in appeal before it, the Tribunal is under an obligation to dispose of the appeal within a period of one hundred and eighty days from the date of the interim order. Under the second proviso, it is declared that if the appeal is not so disposed of within the stipulated period mentioned above, the said order shall stand vacated after the expiry of the said period. It is by virtue of the operation of the above-mentioned proviso it appears the interim order granted in favour of the petitioner lapsed. Consequent upon such development, the 1st respondent initiated proceedings under Section 226(3) of the Income Tax Act (Garnishee Proceedings) and called upon the 2nd respondent herein to pay an amount of Rs.2,41,31,202/-, which amount, according to the 1st respondent was held by the 2nd respondent, but belonging to the petitioner herein. Hence, the present writ petition.

Heard the learned Standing Counsel for Respondents. Respondents have already filed counter.

In the circumstances, we are of the opinion that the writ petition can be disposed of at the admission stage itself in following manner:

That the 2nd respondent is directed to pay an amount of Rs.65,00,000/- (Rupees sixty five lakhs only) to the 1st respondent in compliance with the Garnishee notice dated 07.08.2006 and on receipt of such payment, the garnishee notice shall lapse.

We also further deem it appropriate to direct the Income Tax Appellate Tribunal to dispose of the appeal within a period of four weeks from the date of receipt of this order. The amount paid by the 2nd respondent in obedience to this order shall be either adjusted by the Department or refunded to the petitioner depending upon the result of the final order in the appeal.

With the above directions, the writ petition is disposed of.

JUSTICE J.CHELAMESWAR

JUSTICE D.APPA RAO

7TH SEPTEMBER, 2006

Note: Issue operative portion by wire

(B/O) PGS

THE HON'BLE MR JUSTICE
J.CHELAMESWAR
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7TH SEPTEMBER, 2006